

## **PART 7      INVESTIGATION PROCESSES**

### **Chapter 39: Democratic Compliance Issues**

During its investigation, the Committee issued over 400 document and deposition subpoenas to a variety of organizations and individuals. Of those subpoenas, 320 were issued at the request of the Majority and sought information regarding Democratic fundraising and political activities. Subpoenas were issued to the White House, the Democratic National Committee (“DNC”), the Clinton/Gore Campaign, a wide variety of Executive Branch agencies, banks, private companies and government and private individuals. Beginning in March 1997, the Committee began to receive documents and depose individuals. By the end of the investigation, the Committee had received thousands of boxes of documents, deposed over 200 individuals, and taken 31 days of public testimony.

During the Committee’s investigation, media reports highlighted a number of problems the Committee encountered in moving forward with its investigation. Although there were problems with obtaining some information, the number of documents produced to the Committee and the number of individuals who voluntarily cooperated with the Committee demonstrates that most organizations and individuals assisted the Committee in conducting its investigation. As detailed in Chapter 42 of the Minority Report, the White House produced 120,000 pages of documents<sup>1</sup> and provided, on a voluntary basis, 40 former and current White House employees for testimony.<sup>2</sup> As detailed below, other Democratic affiliated organizations, particularly the DNC, by and large, cooperated fully with the Committee investigation. The DNC produced over 450,000 pages of documents to the Committee and provided former and current DNC officials who testified in depositions lasting a total of 38 days.

Similarly, the number of documents produced by, and the number of cooperative witnesses affiliated with, the Republican Party is also testament to that party’s lack of cooperation with the Committee. The numbers are telling. Entities affiliated with the Republican party produced only a small fraction of the documents produced by comparable Democratic entities. For example, in response to similar documents subpoenas, the DNC produced over 450,000 pages of unredacted documents whereas the RNC produced 70,000 pages of documents -- 20 percent of which were heavily redacted, without explanation. The individuals associated with the two parties also responded differently to requests for testimony. Former and current DNC officials voluntarily agreed to depositions, providing over 38 days of depositions testimony to the Committee. Former and current RNC officials, by contrast, did not agree to depositions, insisting on Committee subpoenas before they would cooperate. Ultimately, even when subpoenas were issued, those RNC officials largely ignored them, ultimately providing only two half days of deposition testimony to the Committee (see Chapter 40).

This chapter discusses the DNC’s cooperation and compliance with the Committee’s investigation. Chapter 40 discusses the response of the RNC and other pro-Republican organizations to the Committee’s investigation. Chapter 41 details the breakdown of compliance with the Committee’s requests. Finally, Chapter 42 discusses the White House cooperation and

compliance with the Committee's requests.

## **FINDING**

**The DNC made a good faith effort to comply with Committee requests.** To this end, the Committee conducted 38 days of depositions, 14 interviews, and five days of public hearings of DNC witnesses. The DNC also produced over 450,000 pages of documents and hired over 30 additional staff to review and prepare documents for production to the Committee.

## **DNC COOPERATION AND COMPLIANCE**

On April 9, 1997, the Committee issued a document subpoena to the DNC requiring it to produce documents relevant to the Committee's investigation. The Committee did not issue depositions subpoenas for DNC testimony because all DNC witnesses voluntarily appeared for deposition and public testimony.

In response to the Committee's requests for documents and testimony, the DNC expended significant time and resources, reviewing over 9 million documents and providing 230 boxes of documents -- exceeding 450,000 pages -- to the Committee.<sup>3</sup> In August 1997, to meet the demands placed upon it by the Committee and other investigations, the DNC doubled the number of employees dedicated to document production and review from 17 to 34.<sup>4</sup>

By the end of the year, the DNC had incurred logistical, technical, and staff costs of \$4.75 million responding to various investigations. That figure does not include legal fees, which significantly increases the total expenditures made by the DNC in response to Committee and other investigative demands.<sup>5</sup> In a July 17, 1997 letter to Chairman Thompson, DNC Chairman Roy Romer concluded that the scope and attendant cost of document production would rival or exceed the costs associated with the largest civil cases in U.S. history, "cases brought against huge corporations with thousands of employees and resources vastly exceeding the limited funds of the DNC."<sup>6</sup>

Repeated requests to the Committee by the DNC to "narrow" the broad document subpoena, so that the DNC could best use its limited resources to address the needs of the Committee, were ignored.<sup>7</sup> Nevertheless, the DNC appears to have made efforts to adjust to the shifting deposition schedules, document demands, and priorities of the Committee.

The DNC also made efforts to ensure that knowledgeable DNC staff were available to the Committee. During the course of the investigation, Committee staff conducted 38 days of depositions and 14 interviews of current and former DNC staff, all of whom appeared voluntarily, many more than once.<sup>8</sup> Four former/current DNC staff appeared as witnesses before the Committee, testifying in five days of public hearings.<sup>9</sup> Despite the considerable efforts of the DNC to cooperate with the Committee, the Majority continued to complain publicly about DNC document production.<sup>10</sup>

In an August 28, 1997 deposition, Joseph Birkenstock, a DNC attorney involved in the DNC production process, testified about the DNC's efforts to comply with the Committee's document subpoena.<sup>11</sup> Regarding document production, Birkenstock stated that he was instructed to carry it out as expeditiously as possible, and there was no apparent deviation from those instructions. Specifically, Birkenstock testified that there was no DNC practice or policy to delay production of documents for any reason, nor did the DNC establish different document production priorities from those established by the Committee. In addition, he stated that the political or legal sensitivity of particular documents or categories of documents was not a factor in determining when they would be produced to the Committee.<sup>12</sup>

From March to November 1997, the DNC produced over 450,000 pages of unredacted documents to the Committee. During this time period, issues arose concerning the assertion of the attorney-client privilege in one DNC deposition and the DNC's late production of files from Richard Sullivan's office and. Those issues are addressed below.

### **Attorney-Client Privilege Issue**

On May 15, 1997, DNC General Counsel Joseph Sandler was deposed by staff of the Committee. Sandler's attorney refused to allow his client to testify about conversations with White House and Democratic party officials, citing attorney-client privilege.<sup>13</sup> After the DNC submitted a written explanation of the privilege,<sup>14</sup> Majority counsel called the White House and was informed that the White House had not, and would not, assert any common interest (or joint defense) privilege, even though such a privilege assertion might be valid.<sup>15</sup> The next day, on May 30, 1997, Sandler appeared for another day of deposition testimony, and the DNC informed the Committee that it would voluntarily be waiving protections it could claim based on attorney-client privilege with respect to communications with the White House.<sup>16</sup> Sandler answered all questions posed by the Committee.

On June 6, a week after the DNC had officially waived the privilege and answered questions in Sandler's second deposition, Chairman Thompson issued an order regarding Sandler's attorney-client privilege assertions. The order essentially memorialized the position that the DNC had already adopted. This order purported to "overrule" the "common-interest" privilege -- an assertion which had already been rescinded by the DNC -- while upholding other privilege assertions that had been made.<sup>17</sup>

In a June 11 letter to Chairman Thompson, DNC Chairman Romer noted that at the second day of Sandler's deposition on May 30, the attorney-client privilege was not invoked in response to any question. Romer opined that this simple fact made the Order appear to be issued to gain partisan publicity. Romer additionally noted that none of Sandler's notes or other documents relating to discussions with any White House official or employee were withheld on grounds of privilege or for any other reason.<sup>18</sup>

Similarly, after the DNC attempted to establish a framework that would permit future disputed documents to be reviewed in camera by Committee counsels, Nonetheless, the

Chairman issued an order demanding that the DNC produce all documents for which it was asserting a privilege for in camera review by Committee counsels. In a September 2, 1997 response letter to Chairman Thompson, DNC Chairman Romer explained that the DNC's assertion of the attorney-client privilege as to certain documents remained consistent with the terms of the Chairman's Order of June 6.<sup>19</sup>

### **Late Production of Certain Files**

In August 1997, the Committee received 4,000 pages of documents from the files of former DNC Finance Director Richard Sullivan. This production included 1,500 pages of handwritten notes. Apparently, these and other documents -- totaling approximately 12,000 pages -- were not reviewed for production until August, even though they apparently were in a file cabinet in the office Sullivan occupied while finance director.<sup>20</sup> According to DNC Chairman Romer, this oversight occurred because the documents were not among those that Sullivan identified to the DNC as being his files, and the files in question were believed to be "generic" Finance Department or staff files. When they were determined to be Sullivan's documents, Romer immediately personally informed Chairman Thompson of their existence. Thereafter, the documents were reviewed over a weekend by DNC staff and produced to the Majority on August 4, in accordance with Romer's commitment to Chairman Thompson.<sup>21</sup>

### **CONCLUSION**

The Democratic National Committee has responded appropriately to subpoenas issued by the Committee and to requests for information and staff interview depositions and public testimony. At great expense, the DNC has produced hundreds of thousands pages of documents and made over 30 witnesses available for depositions and public testimony. These numbers largely speak for themselves regarding the DNC's cooperation with the Committee's investigation, particularly when compared to the RNC's production of a very small number of unredacted documents and no cooperative witnesses. In sum, there was no evidence presented to the Committee that the DNC improperly withheld documents or witnesses during the course of the Committee's investigation.

## NOTES

1. Lanny Breuer, 10/29/97 Hrg., p. 108.
2. Exhibit 2417M.
3. Letter from Chairman Thompson to DNC General Chairman Roy Romer, 7/23/97; telephone conversation with Paul Palmer of Debevoise & Plimpton, counsel to the DNC, 12/15/97; letter from Chairman Romer and Steve Grossman, DNC National Chairman, to Chairman Thompson, 9/2/97; telephone conversation with Paul Palmer of Debevoise & Plimpton, counsel to the DNC, 1/7/98.
4. Letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, to Chairman Thompson, 9/2/97. The 34 staff operate out of the Office of General Counsel ("OGC"). Joseph Birkenstock deposition, 8/28/97, pp. 9-10.
5. Washington Post, 1/19/98.
6. Letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, to Chairman Thompson, 7/17/97.
7. Letter from Roy Romer to Chairman, 6/11/97; letter from Peter Kadzik of Dickstein, Shapiro, Morin & Oshinsky, to Majority Counsel, 7/29/97; letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, 9/2/97.
8. Minority document, "Interviews and Depositions By Minority Staff"; only one DNC individual required a subpoena for deposition testimony -- and that was only after he had already voluntarily provided two full days of testimony.
9. See [http://www.senate.gov/~gov\\_affairs/witness.htm](http://www.senate.gov/~gov_affairs/witness.htm), listing witnesses who publicly testified before the Committee.
10. Letter from Peter Kadzik of Dickstein, Shapiro, Morin & Oshinsky, to Majority Chief Counsel, 5/29/97; letter from Roy Romer, DNC General Chairman and Steve Grossman, DNC National Chairman, 6/26/97; letter from Robert Bauer and Marc Elias of Perkins Coie to Chairman, 10/16/97; letter from Richard Ben-Veniste of Weil, Gotshal & Manges to Chairman, 10/20/97.
11. Joseph Birkenstock deposition, 8/28/97, pp. 131-133.
12. Joseph Birkenstock deposition, 8/28/97, pp. 131-133.
13. Joseph E. Sandler deposition, 5/15/97, p. 174:18-21.
14. A legal research memorandum provided to the Committee on May 21, 1997, by DNC attorney Judah Best, concluded that disclosing privileged information to a person with a common

interest does not waive the attorney-client privilege. Best asserted that “under the law of the District of Columbia, the exchange of privileged information among lawyers representing separate clients and the disclosure of privileged communications by one client to another’s attorney does not waive the attorney-client privilege where the clients have a common interest and the communications relate to the matter of common interest.” Similarly, Best found that the privilege is not waived by disclosure of confidential information between two clients represented by a single attorney where the clients, at the time the information was shared, had common interests. Judah Best Legal Opinion Memorandum, 5/21/97.

15. Letter from Majority Counsel to White House Counsel Breuer, 5/29/97; Letter from Breuer to Majority Counsel, 6/2/97.

16. Joseph E. Sandler deposition, 5/30/97, pp. 63-64, 106-110.

17. The Order permitted, in part, the privilege to be asserted with respect to the substance of certain conversations Sandler had with DNC staff. Under the Order, such conversations would be privileged only to the extent that they were for the specific and sole purpose of Sandler’s being able to render legal advice and if Sandler received or provided the information with the clear expectation that the information or advice would remain confidential. Similarly, the assertion of attorney work product privilege with respect to any conversation Sandler had in the period of September through November 1996, in the presence of any third party was overruled. Finally, the DNC was ordered and directed to produce all documents in Sandler’s files including all his notes that were responsive to the subpoena and a log of all documents in his files withheld from production on the ground of privilege. Chairman’s Order, 6/6/97.

18. Letter from Roy Romer to Chairman, 6/11/97.

19. Letter from Roy Romer to Chairman, 9/2/97.

20. Joseph Birkenstock deposition, 8/28/97, pp. 107-127.

21. Letter from Paul C. Palmer of Debevoise & Plimpton representing the DNC to Majority Counsel, 8/4/97. This production exemplifies the uneven treatment afforded by the Majority staff to the Minority during this investigation. While the DNC produced these documents to the Majority on August 4, despite repeated requests, the Majority did not give the Minority a copy of the production for over two weeks.